

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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JUNE 17 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0063-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JOHN MICHAEL HARPER,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20003991

Honorable Frank Dawley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

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By Brick P. Storts, III

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V Á S Q U E Z, Judge.

¶1 Following a jury trial, petitioner John Harper was convicted of first-degree murder, kidnapping, armed robbery, two counts of burglary, and four counts of theft. He was sentenced to natural life in prison for the murder conviction and to consecutive prison terms for the other crimes, totaling an additional 45.5 years. We affirmed Harper’s convictions and sentences on appeal. *State v. Harper*, Nos. 2 CA-CR 2003-0168, 2 CA-CR 2003-0169 (consolidated) (memorandum decision filed Apr. 7, 2005). Harper then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., which the trial court denied. In July 2008, Harper filed a second Rule 32 petition in which he asserted numerous claims of ineffective assistance of trial counsel, one claim of ineffective assistance of appellate counsel, and one claim of newly discovered evidence. The trial court summarily denied relief, and this petition for review followed. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 On review, Harper challenges only the trial court’s denial of his claims of ineffective assistance of counsel, all of which arose from events that preceded the filing of his first Rule 32 petition. In its ruling denying the underlying petition, the court correctly found all of Harper’s ineffective assistance claims precluded under Rule 32.2(a)(3), as having been waived by his failure to raise them in his previous post-conviction petition. On review, Harper fails to address the trial court’s finding that his claims are precluded. Instead, he merely reasserts the claims he raised in his petition below. To the extent Harper suggests

his claims of ineffective assistance are not precluded because he presented such claims “for the first time” in his second post-conviction proceeding, we reject that argument. As we held in *Swoopes*:

[W]hen “ineffective assistance of counsel claims are raised, or could have been raised, in a Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.”

. . . .

[S]uccessive [ineffective assistance of counsel] claims “will be deemed waived and precluded” not only when they previously were raised, but also when they “could have been raised” in a prior Rule 32 proceeding.

216 Ariz. 390, ¶¶ 23, 25, 166 P.3d at 952-53, *quoting State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (emphasis omitted).

¶3 Because Harper’s claims are clearly precluded, the trial court properly denied his petition for post-conviction relief without conducting an evidentiary hearing. Accordingly, we grant the petition for review but deny relief.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge